

IMPERIUM PATENT WORKS
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Attorneys for Plaintiff and Counterdefendant
ZINUS, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ZINUS, INC., a California corporation,

Plaintiff,
v.

SIMMONS BEDDING COMPANY, a
Delaware corporation, and DREAMWELL,
LTD., a limited liability company of
Nevada,

Defendants.

DREAMWELL, LTD., a limited liability
company of Nevada,

Counterclaimant,
v.

ZINUS, INC., a California corporation,

Counterdefendant.

Case No. 07-CV-03012 PVT

**DECLARATION OF SCOTT
REEVES IN SUPPORT OF
ZINUS, INC.'S MOTION FOR
SUMMARY ADJUDICATION OF
NON-INFRINGEMENT**

1 I, Scott Reeves, declare:

2 1. My name is Scott Reeves. I am the President of plaintiff and counterdefendant
3 ZINUS, INC. ("Zinus"). I have personal knowledge of the matters set forth herein and, if
4 called upon to testify, could competently testify thereto.

5 2. On August 7, 2007, I personally directed and oversaw the making of one unit of a
6 "Mattress-in-a-Box Swirl Wrap" product ("Swirl Wrap product") in Pleasanton, California.
7 The Swirl Wrap product was made using a method that I will refer to in this declaration as
8 the "Swirl Wrap packaging method". The various steps in the Swirl Wrap packaging
9 method are set forth below in paragraphs 3 through 10.

10 3. First, an inner spring mattress is placed in a sheath of flexible plastic sheeting
11 material. The sheath has a sandwich-bag, pocket shape. One side of the sheath is open, and
12 it is through this open side that the inner spring mattress is inserted.

13 4. After the mattress has been inserted into the sheath, the mattress/sheath assembly
14 is placed between two plates of a mechanical press. The two plates are then forced toward
15 each other, thereby compressing the mattress within the plastic sheath. No vacuum
16 equipment is used. An evacuation of air does not cause the mattress to compress. Rather the
17 mattress is mechanically compressed between the two plates, and this compression forces air
18 out of the mattress. Escaping air flows out of the sheath through the open side.

19 5. Next, the open side of the sheath is sealed such that the flattened and
20 compressed mattress is sealed inside the sheath.

21 6. Next, the two plates of the press are opened and the flattened mattress in its sheath
22 is removed from the press.

23 7. Next, the flattened mattress in its sheath is placed on a rectangular sheet of colored
24 flexible film. The film is not a sleeve, but rather is a rectangular sheet.

25 8. Next, the compressed mattress within its sheath and the flexible film are rolled
26 together to form a cylindrical rolled-up mattress assembly. Attached as Exhibits R-A
27 through R-D are true and correct copies of photographs of a compressed mattress and a
28 flexible film being rolled together to to form the cylindrical rolled-up mattress assembly of

1 the particular unit of the Swirl Wrap product mentioned above in paragraph 2. Exhibit R-A
2 shows the flexible film before it is rolled together with a compressed mattress.

3 9. Next, ribbon-shaped bands are wrapped circumferentially around the rolled-
4 up mattress assembly to hold the roll in place. In one example, the ribbon-shaped
5 bands are strips of adhesive tape. In another example, the ribbon-shaped strips are
6 strips of durable plastic stripping. In the case of the unit of the “Mattress-in-a-Box
7 Swirl Wrap” product of which I oversaw the making in Pleasanton, California, the
8 ribbon-shaped bands were strips of adhesive tape. Attached as Exhibit R-E is a true
9 and correct copy of a photograph of the cylindrical rolled-up mattress assembly of the
10 Swirl Wrap product mentioned above in paragraph 2. The colored flexible film appears
11 as a swirl at the ends of the cylinder. Exhibit R-E shows the three strips of adhesive
12 tape that are wrapped circumferentially around the the Swirl Wrap product mentioned
13 above in paragraph 2.

14 10. The banded and rolled-up mattress assembly is then placed into a
15 cardboard packing box. Attached as Exhibit R-F is a true and correct copy of a
16 photograph of the cardboard packing box into which the cylindrical rolled-up mattress
17 assembly standing to its right is placed. At no time in the Swirl Wrap packaging
18 method is the rolled-up mattress assembly inserted into any structure other than the
19 cardboard box. Once the banded and rolled-up mattress assembly is in the cardboard
20 box, the open panels of the cardboard box are taped closed. Attached as Exhibit R-G is
21 a true and correct copy of a photograph of the cylindrical rolled-up mattress assembly
22 placed in a cardboard box before the open panels of the cardboard box are taped closed.
23 Attached as Exhibit R-H is a true and correct copy of a photograph of the Swirl Wrap
24 product mentioned above in paragraph 2 after the panels of the cardboard box are taped
25 closed.

26 11. The one particular unit of the Swirl Wrap product mentioned above in
27 paragraph 2 and depicted in Exhibits R-A through R-H is presently in Zinus’ offices in
28 Pleasanton, California.

1 12. In the Swirl Wrap packaging method described above in paragraphs 3
2 through 10, the rolled-up mattress assembly is not “inserted into” the ribbon-shaped
3 bands. In the case of the ribbon-shaped bands being adhesive tape, the adhesive tape
4 adheres to the outside of the rolled-up mattress assembly as the tape is applied. It is
5 impossible for the rolled-up mattress assembly to be “inserted into” the bands of
6 adhesive tape. In the case of the ribbon-shaped bands being bands of durable plastic
7 stripping, the bands are wrapped around the rolled-up mattress assembly such that there
8 is significant frictional force between the rolled-up mattress assembly that is attempting
9 to expand against the restraining bands. The rolled-up mattress assembly cannot and
10 does not slide “into” the bands or slide with respect to the bands.

11 13. There are what I will refer to as two “cases” of the Swirl Wrap packaging
12 method. In the first case, all the steps of the Swirl Wrap packaging method set forth
13 above in paragraphs 3 through 10 occur outside the United States, and the resulting
14 Swirl Wrap product is then shipped into the United States. In the second case, the
15 initial compression step occurs outside the United States, whereas the following
16 packaging steps occur in the United States. In both cases, the resulting Swirl Wrap
17 product is present in the United States. The one particular unit of the Swirl Wrap
18 product mentioned above in paragraph 2 that is in my office in Pleasanton, California,
19 was made using the second case of the Swirl Wrap packaging method.

20 14. Zinus has made many units of the Swirl Wrap product using both cases of
21 the Swirl Wrap packaging method. Many units of the Swirl Wrap product made using
22 both cases of the Swirl Wrap packaging method have been supplied by Zinus to Wal-
23 Mart Stores Inc. as samples in an attempt to get Wal-Mart Stores Inc. to order and buy
24 large volumes of the Swirl Wrap product. I am currently attempting to sell the Swirl
25 Wrap product in the United States, where the Swirl Wrap product is made using the
26 Swirl Wrap packaging method.

27 15. On August 7, 2007, Zinus Inc.’s attorney, Mr. Darien Wallace, sent
28 Simmons’ attorney, Mr. Kenneth Wilson, a letter that details the making of the

1 particular unit of the Swirl Wrap product mentioned in paragraph 2 above. A copy of
2 the letter is attached as Exhibit W-C. The August 7, 2007, letter included the
3 photographs of Exhibits R-A through R-H that depict the various steps in the carrying
4 out of the Swirl Wrap packaging method and the resulting Swirl Wrap product.

5 16. Subsequent to the making of the Swirl Wrap product pictured in the letter
6 of August 7, 2007, Zinus has at my request made numerous units of the Swirl Wrap
7 product in Zinus' factory in China using the Swirl Wrap packaging method set forth
8 above in paragraphs 3 through 10 of this declaration, and Zinus has then shipped those
9 units into the United States. Several of those units have been supplied to Wal-Mart
10 Stores Inc. as samples as part of my attempt to get Wal-Mart to purchase large
11 quantities of the Swirl Wrap product. In some units, the ribbon-shaped bands are
12 adhesive tape. In other units, the ribbon-shaped bands are bands of durable plastic tape.

13
14 I declare under penalty of perjury under the laws of the United States of America that
15 the forgoing is true and correct.

16 Executed this 29th day of September 2007 in Pleasanton, California.

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20 Scott Reeves
21 President
22 Zinus, Inc.
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